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JUL 11 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 11, 1997

EX PARTE OR LATE FILED

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Ex Parte Presentation
CC Docket No. 92-297

Dear Mr. Caton:

Pursuant to Section 1.1206(a)(1) of the rules of the Federal Communications Commission, 47 C.F.R. §1206(a)(1), enclosed for filing on behalf of U.S. WaveLink Telecommunications Group, L.P. in the above-referenced proceeding are two copies of an ex parte letter to Chairman Reed E. Hundt, dated July 11, 1997.

If you have any questions concerning this matter, please do not hesitate to contact the undersigned.

Sincerely,



Tom W. Davidson, P.C.
Phuong N. Pham, Esq.

Attorneys for U.S. WaveLink
Telecommunications Group, L.P.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE OR LATE FILED

July 11, 1997

BY HAND DELIVERY

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Re: Ex Parte Presentation
Local Multipoint Distribution Service
CC Docket No. 92-297

Dear Chairman Hundt:

U.S. WaveLink Telecommunications Group, L.P. ("WaveLink") hereby urges the Federal Communications Commission ("FCC" or "Commission") to commit to commencing the Local Multipoint Distribution Service ("LMDS") auction by no later than November 1997. Although WaveLink understands that a number of other regulatory priorities continue to vie for the Commission's limited resources, it is imperative that the LMDS auction commence immediately in order to ensure administrative certainty and sound business planning. Indeed, commencement of the LMDS is long overdue, given that it already has been four months since the Commission last directed the Wireless Telecommunications Bureau to implement procedures for auctioning LMDS licenses pursuant to its order establishing service and auction rules for LMDS. See Local Multipoint Distribution Service, CC Docket No. 92-297, Second Report and Order (released Mar. 13, 1997) ("LMDS Order"). Moreover, it has been more than four years since the Commission first proposed to authorize LMDS operation and almost a year since the Commission designated spectrum for LMDS use. See Local Multipoint Distribution Service, CC Docket No. 92-297, Notice of Proposed Rulemaking, 8 FCC Rcd 557 (1993); First Report and Order (released July 22, 1996). The capital markets have been poised to invest in LMDS, and any further delay will dampen the interest of investors, slow the delivery of innovative video programming and telecommunications services to the public, and irreparably harm the growth of competition in LMDS and in the video programming and telecommunications markets in which LMDS licensees seek to compete.

Although several parties have challenged certain aspects of the Commission's LMDS Order, such legal challenges must not be permitted to delay commencement of the LMDS auction. Indeed, Section 1.103(a) of the FCC's rules provides that "the effective date of any

Chairman Reed E. Hundt
July 11, 1997
Page 2

Commission action shall be the date of public notice of such action." 47 C.F.R. § 1.103(a). Since the LMDS Order was released on March 13 and placed on public notice in the Federal Register on April 29, the service and auction rules established in the LMDS Order are and have long been final and effective. No FCC or court stay has been issued in the four months since the release of the LMDS Order.

The current delay in commencing the LMDS auction is unprecedented. The Commission has a well-established policy of expediting the assignment of licenses by auction. For example, when the Commission on June 24, 1996, established rules for the auctioning of Personal Communications Service ("PCS") licenses in the F block, it immediately began implementing those rules by issuing a public notice just two days later announcing that the auction would commence on August 26, 1996. See FCC Public Notice, DA 96-1026 (June 26, 1996). Indeed, the F block auction commenced as scheduled, despite the pendency of legal challenges raising issues that would have affected the ability of interested parties to compete for the F block licenses.

Furthermore, even in the case of the C block auction, which experienced a number of delays and involved more numerous and complex legal challenges, the Commission took prompt measures at every step to expedite commencement of the auction. For example, the Commission disposed of all twenty-six petitions for reconsideration or clarification of its C block auction rules within four months of the issuance of such rules. See Implementation of Section 309(j) of the Communications Act, 10 FCC Rcd 403 (released Nov. 23, 1994). The scheduled date of commencement of the C block auction was postponed only as a result of a court stay of the C block auction rules. See Telephone Electronics Corp. v. FCC, No. 96-1015 (D.C. Cir., released Mar. 15, 1995). Upon the lifting of the court stay of the C block auction rules on May 1, 1995, the Commission immediately established August 2, 1995, as the new auction date. See FCC Public Notice (May 1, 1995).¹

As you yourself have acknowledged, the Commission "should not establish artificial delays – to the contrary, spectrum should be assigned as quickly as possible." R.E. Hundt, Remarks to Citizens for a Sound Economy, Spectrum Policy and Auctions: What's Right, What's Left (June 18, 1997). Similarly, in recognizing the importance of expediting the auctioning of LMDS licenses, the then Chief of the FCC Wireless Telecommunications Bureau declared that "[o]nce allocations are made, it is our responsibility to get those licenses out as soon as possible." Keynote Address by M.C. Farquhar, Chief, Wireless Telecommunications Bureau, before the TeleStrategies "LMDS '97" Conference, LMDS: Opening the Door to

¹ The C block auction was further postponed only because the Supreme Court's decision in Adarand Constructors, Inc. v. Peña, 115 S.Ct. 2097 (1995), which was issued on June 12, 1995, fundamentally altered the Constitutional considerations which the Commission was required to take into account in establishing its C block licensing rules. No such extraordinary circumstances exist with respect to the LMDS licensing rules, where only six petitions for reconsideration have been filed with the Commission, no court stay has been issued, and no Constitutional questions have been raised.



Chairman Reed E. Hundt
July 11, 1997
Page 3

Broadband Competition (Mar. 18, 1997). Consequently, in reliance on the Commission's well-established policy of promptly assigning licenses following adoption of licensing rules, interested parties seeking LMDS licenses and investors in such parties have been eagerly awaiting and planning for the prompt commencement of the LMDS auction. Any further delay will frustrate legitimate business expectations and deny the public of the full benefits to be offered by LMDS.

Accordingly, WaveLink urges the Commission to act expeditiously and issue a public notice announcing a firm date of no later than November 1997 for the commencement of the LMDS auction.

Very truly yours,

U.S. WAVELINK TELECOMMUNICATIONS
GROUP, L.P.

By: Jason S. Priest by [signature]
Name: Jason S. Priest
Its: President

cc: Parties on the attached Certificate of Service



CERTIFICATE OF SERVICE

I, Elizabeth O'Donnell Dickerson, an employee of Akin, Gump, Strauss, Hauer & Feld, L.L.P., certify that copies of the foregoing **Ex Parte Presentation** were sent via Hand Delivery on this 11th day of July 1997 to the following parties:

William F. Caton
Acting Secretary
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1919 M Street, N.W.
Room 222
Washington, D.C. 20554

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Federal Communications Commission
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Commissioner James H. Quello
Federal Communications Commission
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Commissioner Susan Ness
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Elizabeth O'Donnell Dickerson